

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF WASHINGTON

1 MARTIN GILL, an individual,

2 Plaintiff,

3 } No. CV-13-252-LRS

4 v. } **ORDER OF**
5 } **CONSOLIDATION**

6 DePUY SPINE, INC., an Ohio corporation,
7 DePUY SYNTHES SALES, INC.,
8 a Massachusetts corporation, and
9 JOHNSON & JOHNSON, a New Jersey
10 corporation,

11 Defendants.

12 DePUY SYNTHES SALES, INC.,

13 Plaintiff,

14 } No. CV-13-376-LRS

15 v. } **ORDER OF**
16 } **CONSOLIDATION**

17 MARTIN GILL, an individual,

18 Defendant.

19 **BEFORE THE COURT** is the Plaintiff Martin Gill's Motion To
20 Consolidate (ECF No. 12 in CV-13-252-LRS). At the December 3, 2013
21 telephonic scheduling conference in CV-13-376-LRS, counsel for Plaintiff DePuy
22 Synthes Sales, Inc., who is also counsel for the Defendants in CV-13-252-LRS
23 (DePuy Spine, Inc., DePuy Synthes Sales, Inc., and Johnson & Johnson), agreed
24

1 that consolidation is warranted. Based on that stipulation and good cause
 2 appearing, Plaintiff Martin Gill's Motion To Consolidate (ECF No. 12 in CV-13-
 3 252-LRS) is **GRANTED**.

4 Under Fed. R. Civ. P. 42(a), “[i]f actions before the court involve common
 5 questions of law or fact, the court may . . . consolidate the actions” Before
 6 Rule 42(a) was adopted, the general rule posited that “consolidation . . . does not
 7 merge the suits into a single cause, or change the rights of the parties, or make
 8 those parties in one suit parties in another.” *Johnson v. Manhattan Ry. Co.*, 289
 9 U.S. 479, 496-97, 53 S.Ct. 721 (1933). Rule 42(a), however, affords courts broad
 10 discretion to consolidate cases. *In re Adams Apple, Inc.*, 829 F.2d 1484, 1487 (9th
 11 Cir. 1987). Merger of actions may be appropriate under certain circumstances.
 12 See *Schnabel v. Lui*, 302 F.3d 1023, 1035 (9th Cir. 2002)(discussing three forms of
 13 consolidation including “when several actions are combined and lose their
 14 separate identities”).

15 A merger of actions is what is proposed in the motion to consolidate. That
 16 appears to be appropriate as the two actions mirror each other: each is based on
 17 facts surrounding Mr. Gill's former employment with DePuy and the Employee
 18 Secrecy, Intellectual Property, Non-Competition and Non-Solicitation Agreement
 19 entered into by Mr. Gill and DePuy. Accordingly, the two actions shall be
 20 **CONSOLIDATED** and proceed under a single cause number, that being the
 21 earlier filed case of CV-13-252-LRS. All further filings shall be made under that
 22 cause number and the causes of action alleged in the First Amended Complaint of
 23 record in CV-13-376-LRS shall be adjudicated as part of CV-13-252-LRS. The
 24 District Executive is directed to **CLOSE** CV-13-376-LRS.

25 The Scheduling Order entered in CV-13-252-LRS at ECF No. 9 is hereby
 26 **VACATED**. An Amended Scheduling Order is entered contemporaneously
 27 herewith containing the dates discussed at the December 3, 2013 telephonic
 28 scheduling conference. This Amended Scheduling Order sets forth the pre-trial

1 dates and trial date for the consolidated actions.

2 **IT IS SO ORDERED.** The District Executive shall forward copies of this
3 order to counsel of record in CV-13-252-LRS and CV-13-376-LRS.

4 **DATED** this 4th day of December, 2013.

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6 *s/Lonny R. Suko*

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LONNY R. SUKO
8 Senior United States District Judge
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